

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90034

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: September 21, 2020)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(i)-(iii).

Complainant, a state prisoner, filed a pro se petition for a writ of habeas corpus and a pro se civil rights complaint. The matters were assigned to the Subject Judge. In the habeas proceeding, the Subject Judge granted Complainant’s request to proceed in forma

pauperis (IFP). In the civil rights action, the Subject Judge denied Complainant's IFP motion, concluding that Complainant had three "strikes" under 28 U.S.C. § 1915(g). Complainant then filed a recusal motion in both cases. The Subject Judge denied the motions.

In the civil rights action, Complainant filed an appeal from the denial of the IFP and recusal motions. A panel of the Court of Appeals summarily affirmed the order denying recusal and remanded the IFP issue to the Subject Judge to reconsider Complainant's allegation that he faces imminent danger. Upon remand, the Subject Judge granted Complainant IFP status. Complainant then filed a motion for emergency injunctive relief, which the Subject Judge has not yet resolved. Both the habeas petition and the civil rights complaint remain pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "was mis-managing cases that were pending before her" and wrongfully denied Complainant's recusal motion. In addition, Complainant alleges that the Subject Judge's failure to recognize that Complainant faces "imminent danger" is attributable to a "general lack of empathy and [a] continuous pattern of stalling and hindering prosecution in failing to require Defendants to [r]espond." Finally, Complainant suggests that the Subject Judge's orders demonstrate that she is "disabled."

To the extent this complaint contests the Subject Judge's decisions to initially deny Complainant IFP status, to decline to recuse, or other substantive rulings, the allegations are merits-related. Merits-related allegations do not constitute cognizable misconduct.

Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*

(“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”).

Indeed, as previously noted, Complainant has already pursued an appeal of the Subject Judge’s recusal and IFP rulings. This administrative proceeding does not provide another opportunity to litigate those issues. “The misconduct procedure [under the Judicial Conduct and Disability Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Accordingly, such merits-related allegations are subject to dismissal. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant’s allegations are not merits-related, they are unsubstantiated. A review of the record reveals no support for Complainant’s claim that the Subject Judge suffers a disability or has engaged in any form of judicial misconduct. Accordingly, this complaint is also subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C.
§ 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: September 21, 2020)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the Office of the Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, and in an envelope marked "Misconduct Petition" or "Disability

Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the *Rules for Judicial-Conduct and Judicial-Disability*

Proceedings is available from the Office of the Circuit Executive and on the Court of

Appeals’ internet site, www.ca3.uscourts.gov.

s/ D. Brooks Smith

Chief Judge

Dated: September 21, 2020